

COMMITTEE MEMBERS

William J. Giovon (C)

William O'Neil (VC)

Daniel L. Martin

Anthony S. Guerriero

William C. Schaefer

Stella Szczesny

Sidney Bogan

October 22, 2012

**NOTICE OF MEETING
OF THE
WAYNE COUNTY ETHICS BOARD**

Monday, October 22, 2012 – 4:00 p.m.

Hearing Room 704, Guardian Building, 500 Griswold, Detroit, MI 48226

Wayne County Ethics Board has scheduled the meeting of the Board on Monday, October 22, 2012 at 3:00 p.m. in Hearing Room 704, Guardian Building, 500 Griswold, Detroit, MI 48226 to consider the following:

- A. Roll Call.
- B. Approval of the Minutes of August 20, 2012 meeting.
- C. Unfinished Business
- D. New Business
- 1. Proposed amendments to Ethics Ordinance.
- 2. Rules of Procedure.
- 3. Communication Strategy.
- E. Such other matters as may be properly submitted before the Committee.
- F. Public Comments.
- G. Adjournment

Note 1: This meeting is called in accordance with provisions of the "Open Meetings Act", Act No. 287, Public Acts of 1976.

Note 2: In accordance with the provisions of Rule 3, "The Chairperson of a Committee, when requested in advance of any given meeting, may permit a person making such request to address the Committee on any matter on the Agenda. Such address shall not be longer than the time allotted by the Chairperson, subject to the approval of the Committee".

Note 3: In accordance with the provisions of Rule 3, "The Chairperson of a Committee, when requested in advance of any given meeting, may permit a person making such request to address the Committee on any matter on the Agenda. Such address shall not be longer than the time allotted by the Chairperson, subject to the approval of the Committee".

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B. Approval of minutes from the August 20, 2012 meeting.

MINUTES
WAYNE COUNTY ETHICS BOARD

Monday, August 20, 2012 – 4:00 P. M.
Hearing Room 704, Guardian Building, 500 Griswold, Detroit, MI, 48226.

A. Roll Call 4:00 P.M.

Daniel Martin	- Excused
William O' Neil	- Present
William J. Giovon	- Present
Anthony S. Guerriero	- Present
William C. Schaefer	- Present
Stella Szczesny	- Present
Sidney Bogan	- Present

Due to the Wayne County Clerk not yet being present, the members were not sworn into their positions on the Board. Wayne County Commission Chairman Woronchak thanked the members of the Ethics Board for their willingness to serve. The Chairman then moved to Item D on the agenda.

D. Overview of the Wayne County Ethics Ordinance by the Wayne County Commission Counsel's Office.

Pamela Lane, Commission Counsel, gave an overview of the Board and its duties.

Mr. William J. Giovon stated that he has been appointed by the County Executive. He disclosed that before he was asked to serve on the Board, he had been retained by the County to represent a County employee in Federal District Court. He made known that his representation had been terminated before he was asked to serve on the Board.

Ms. Stella Szczesny stated that she was appointed to the Board by Raymond Wojtowicz, Wayne County Treasurer. She disclosed that she and her husband currently have a land contract with the Wayne County Treasurer's son. She made known that her husband will be handling the remainder of the land contract and she will not be involved. She stated she would resign if the Board believes her position is a conflict of interest.

At this time Cathy Garrett, Wayne County Clerk, swore the members into their positions.

Mr. Guerriero stated that, prior to being appointed to the Ethics Board, he was previously on the Wayne County Assignment Counsel list.

Mr. Giovon stated that he is appointed as a Special Master by the presiding judge of the criminal division to review files. His service has been partially completed.

The Committee moved to the election of officers.

C. Election of officers:

a. Chairperson

Guerriero/Szczesny

Approved. Nomination for Mr. Giovan to serve as Chair of the Wayne County Ethics Board. Motion Carried.

b. Vice-Chairperson

Guerriero/Schaefer

Approved. Nomination for William O' Neil to serve as Vice-Chair of the Wayne County Ethics Board. Motion Carried.

Mr. Giovon stated that he is honored to serve as Chair of the Committee.

The Committee then moved to Item E.

E. Presentation by a representative of the Wayne County Personnel/Human Resources Office on its efforts to comply with the Wayne County Ethics Ordinance.

Tish King, Director of Personnel/Human Resources, spoke to Section 9 of the Ethics Ordinance. She stated that the ordinance has been sent electronically along with acknowledgment forms to all employees. Those employees who do not have e-mail will receive a hard copy of the documents. She also stated that the disclosure will be in compliance by March 15, 2013.

Ken Wilson, Director of Labor Relations, stated that the ordinance was reviewed and that as of now the union representatives have no problem with the ordinance.

Mr. O'Neil congratulated the Wayne County Commission Special Committee on Ethics on a successful process. He requested additional information from Commission Counsel regarding Section 7.1, Definition of a Quorum. He also stated concerns about staff for the Committee. Mr. O. Neil believed staggered terms should be required for the Board members.

Mr. Giovon, Chair of the Committee, stated that he believed the ordinance should state that a member can be removed by a two thirds vote of the Commission. He stated that Section 10.D needs clarification regarding the removal of elected officials.

Pamela Lane, Commission Counsel stated the Ethics Disclosure Form will be submitted to the committee at the next meeting.

Mr. Giovon stated that he does not feel the Committee should not have trials on claims that the committee feels are illegitimate. He believes a procedure is needed to dispose of complaints that on their face do not allege a prima fascia state a violation of the Ethics Ordinance.

Zenna Elhasen, Director of Wayne County Corporation Counsel introduced herself to the Committee.

- B. Approval of Agenda
- F. Such other matters as may be properly submitted before the Committee.

The Committee recommended meeting every two months or as called by the Chair. The next meeting was scheduled for October 22, 2012 at 3 p.m.

Respectfully submitted,
Darcel Brown
Legislative Research Assistant

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WAYNE COUNTY ETHICS BOARD

October 22, 2012

D. 1. - Proposed amendments to Ethics Ordinance

Suggested Amendments to Ethics Ordinance

Section 7.c

(c) Organization. The PRESIDING OFFICER OF THE seven-member ethics Board shall be governed by the chairperson, who shall be elected by majority vote of ethics board members.

Comment: This amendment more accurately defines the authority of the chairperson.

Proposed Second Paragraph to Section 7.1 (f) - Support

The County of Wayne shall defend the members of the ethics board and indemnify them against any claims or causes of action that may be asserted against them arising from their actions or duties under this ordinance.

Comment: Although it may be implicit already, the members of the ethics board should not be exposed to personal liability or the cost of defense on account of actions taken pursuant to their obligations under the ordinance. This proposed added paragraph makes explicit that the County will provide a defense and indemnification against claims that may arise pursuant to their duties.

Section 7.1 (g)

(g) Removal. Any member of the board may be removed by the ~~appropriate elected official~~ AFFIRMATIVE VOTE OF TWO-THIRDS OF THE MEMBERS OF THE WAYNE COUNTY BOARD OF COMMISSIONERS for good cause, including but not limited to incompetence, substantial neglect of duty, gross misconduct, malfeasance in office, conflict of interest, or violation of any law, after written notice, stating the grounds for removal.

Comment: The existing provision allows for removal of a member of the board by the sole action of one person, i. e. the official who appointed that member. This circumstance can be seen as affecting the independence of the member, and most assuredly so in any instance where the conduct of the appointing official may be concerned. The proposed amendment allows for removal of a member, but under a more stringent standard, and by a more neutral authority, the Wayne County Board of Commissioners.

Section 7.5: Hearings

(a) ~~No later than sixty (60) calendar days after receiving the complaint,~~ The Ethics Board shall convene a hearing on the complaint AS SOON AS IS PRACTICABLE.

(f) ~~Within ninety (90) days after receiving the complaint,~~ The ethics board shall render its decision, by majority vote of the members appointed.

Comment: It seems futile to be able to accurately predict a limitation on the time within which a board can convene a hearing. For example, Section 7.3(i), naturally enough, provides that the board may request additional information. It can't be predicted how long it will take to receive the information or to investigate it, not to mention other factors, such as a delay in filing an answer to the complaint.

Similarly, the timing of the decision cannot rationally be governed by the original date of filing of the complaint. Not even after the conclusion of the hearing can there be any accurate prediction of how long it will take a seven-member board to reach a decision. Surely it must be assumed that the Board is obliged to make a decision as soon as is possible under the circumstances.

Section 10 (d)

(d) In addition to any other penalty, whether criminal or civil, a public servant who violates this ordinance may be subject to disciplinary action, including censure, reprimand, removal, dismissal or discharge BY THE EMPLOYER OF THE PUBLIC SERVANT.

Comment: This amendment clarifies that the cited discipline refers to the official employing the public servant, and not to the Ethics Board.

William J. Giovan

August 23, 2012

WAYNE COUNTY ETHICS BOARD

October 22, 2012

D. 3. - Communication Strategy

Ethics Board Plan

Office of Policy, Research and Analysis (OPRA) function as support

The administrative work for Ethics can be easily accomplished in by the personnel of the Office of Policy Research and Analysis. There are three categories of work to be done for the Board: Processing Complaints, Communicating with the Board and facilitating meetings.

Complaint Monitoring

The optimal situation is to have the email account connected to the hotline. Therefore the all hotline voicemails will go to the Ethics email account simplifying the process of monitoring. Furthermore, the individual responsible for monitoring will have the Ethics account available in their regular outlook account making monitoring easy. Also, I recommend that the OPRA Director (John Pfeiffer) has access to the account to provide for a backup.

- Emails to the Ethics email account to be reviewed daily by Amy Aubry
- Voicemails to the Ethics account be reviewed daily by Amy Aubry
- Each inquiry will be given a number and logged,
- After an inquiry is logged in, the appropriate authority will be notified in accordance to the Ethics Ordinance.

An email account has been set up and it is wcethics@co.wayne.mi.us

Communicating with the Chair and the Board

OPRA will communicate with the Ethics Board Chair to arrange meeting schedules, meeting logistics, and confirming agendas. OPRA will notify the Board of complaints in the manner established by the Board. Direct communication to the Board Chair will be performed by John Pfeiffer and Amy Aubry as his backup.

Meetings

OPRA will facilitate the operations of each meeting such being responsible for committee agendas, clerking the meeting, posting agendas, preparing committee minutes and insuring the meeting room is ready for a meeting. This will be done by Darcel Brown and Makisha Morse will be his back up.

Communication Issues

There are a couple communication issues to resolve at the inception of the Ethics Board. The first is to develop a complaint form. This would be use as vehicle to process issues that come be for the Board. While the Ethics Ordinance does not require the following for a complaint form, it does require a complaint to have the following items:

- be in writing;
- contain the name, address and phone number of the complainant;

- contain the name and position, if known, of the public servant alleged to have violated this Ordinance ("respondent");
- contain a statement of the alleged facts and circumstances which shall specify one (1) or more of the standards of prohibited conduct outlined in the Ethics Ordinance;
- contain a statement that the complainant has read the complaint and know its contents, and believes the alleged violations to be true;
- contain the signature of the complainant before a notary.

Since the ordinance requires a complaint have several requirements, complaints have consistency if there is an agreed upon form that is easily accessible.

Other items that the form should contain:

- Details on how to file; the ordinance requires complaints to be filed with the designee of the Ethics Board
- Recognition that to the extent required by law, the identity of the complainant shall be kept confidential
- Stating the Ethic's Ordinance guidelines to frivolous complaints.

Another consideration is developing a communication strategy create a presence and make county employees aware of the new ordinance. This could be accomplished through several vehicles such as the use of the:

- County Wide Email to inform county employees of the new requirements
- A website that contains the following
 - details the compliant process
 - copy of the complaint form
 - the Board's contact information such as address, email and hotline number
 - copy of the ordinance

The Ordinance requires that the Ethics Board submit a summary of the year's actions to each appointing official by December 15th of each year. I propose that the OPRA and the Commission's Public Information Department work together in creating this document.

WAYNE COUNTY ETHICS BOARD

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D. 2. - Rules of Procedure

WAYNE COUNTY BOARD OF ETHICS COMPLAINT PROCESS
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Suggested language for discussion by Wayne County Board of Ethics members concerning the complaint process:

Complaint Process.

- (a) *Filing of complaint.* Any person may file a written, sworn and signed complaint with the Board of Ethics alleging a violation by any officer, employee or contractor of the County of this division. The complaint shall only be on the form provided by the County. If the alleged violation concerns the Board of Ethics attorney, then special counsel shall perform the steps required of the Board of Ethics attorney under this division. Each complaint shall be based on personal knowledge and shall fully state the facts of the violation.
- (b) *Notification of complainant and alleged violation.* Within ten business days after receiving the complaint, the Board of Ethics attorney shall notify the complainant that the complaint has been received and indicate the review process. Within the same time period, the Board of Ethics attorney shall forward a copy of the complaint and a description of the review process to the alleged violator.
- (c) *Request for information.* The Board of Ethics may request information from the alleged violator concerning the complaint.
- (d) *Initial review.* The Board of Ethics attorney shall, within 14 days, review the complaint and all supporting documents submitted by the complainant and by the alleged violator and shall determine:
 - (1) Whether or not the complaint is in the proper form;
 - (2) Whether the complaint falls under the scope and authority of the Board.
- (e) *Decision by review committee.* If the complaint meets the requirements of the subsections (d) of this section, the Board of Ethics attorney, the chairperson and the vice-chairperson of the Board of Ethics shall constitute a review committee and shall review the complaint and all information submitted to determine whether the complaint alleges a *prima facie* violation of the Ethics Ordinance. In the absence of either the chairperson or vice-chairperson, the individual with the most seniority on the Board of Ethics shall sit on the review committee. Upon review, the review committee shall, by a majority vote, do one of the following:
 - (1) Dismiss the complaint;
 - (2) Approve the complaint without a recommendation;

WAYNE COUNTY BOARD OF ETHICS COMPLAINT PROCESS
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- (3) Approve the complaint with a recommendation; or
- (4) Refer the complaint to another agency for investigation.

Both the complainant and the alleged violator shall be notified in writing by the Board of Ethics attorney of the decision at this step.

- (f) *Decision by Board of Ethics.* Upon receipt and review of an approved complaint, the full Board of Ethics shall decide upon a course of action.
- (g) *Notice of hearing.* If the Board of Ethics orders a hearing, the date for the hearing shall not be more than 30 days from the date it received the recommendation of the Board of Ethics attorney. Notice of the hearing shall be given to the officer or employee involved, the immediate supervisor, the County elected officials, the County Commissioners and the Board of Ethics attorney by personal service or certified mail, return receipt requested. Notice shall be given not less than 20 days prior to the hearing.
- (h) *Recommendation by Board of Ethics.* The Board of Ethics shall issue an advisory report and recommendation within 30 days of the conclusion of the hearing.
- (i) *Conduct of hearing.* The hearing shall be conducted informally. Witnesses shall be sworn by the presiding officer of the Board of Ethics or other official authorized to administer oaths. The alleged violator shall have the right to counsel and the right to present evidence and witnesses and to cross examine witnesses. The state rules of evidence and civil procedure shall not apply. Insofar as practical, hearings shall follow the administrative procedures act of 1969, Public Act No. 306 of 1969 (MCL 24.201 et. Seq.). A written or electronic record shall be kept of the proceedings. The Board of Ethics shall have subpoena power to obtain information and compel witnesses to appear for hearings when necessary.

Advisory opinions.

- (a) Requests for advisory opinions shall be filed with the Board of Ethics attorney and state the request in detail. The request shall be in writing and signed. The Board of Ethics attorney shall examine and request and, if in proper form and within the purview of the Board, forward the request to the Board of Ethics for an opinion. The Board of Ethics attorney shall advise the Board of Ethics in writing of any request not forwarded and the reason for the denial.

WAYNE COUNTY BOARD OF ETHICS COMPLAINT PROCESS

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- (b) The Board of Ethics may make such informal investigation of the facts and issues raised by the request as the Board deems advisable. The Board shall render its opinion with 30 days of receiving the request. The Board of Ethics may reject a request for advisory opinion if the Board, in good faith, believes the request to be in bad faith, for improper purposes, frivolous, of only minor consequence, or has been effectively ruled on or settled by past actions of the Board of Ethics, a County ordinance, or other law.
- (c) If the County officer, employee or contractor is the subject of an advisory opinion and has received a copy of the opinion, his actions shall be *prima facie* legal and ethical if he conforms to the opinion. This section shall not apply to a criminal act.
- (d) Advisory opinions may not be used for any purpose not specifically authorized by this ordinance. Opinions of the Board shall not be binding but shall be advisory only.

Please review the above for discussion at the next Board of Ethics meeting on October 22, 2012. It is respectfully suggested that the Board consider creating a complaint process by internal regulation, bylaws, or adopted rules of procedure.